

SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036

WWW.SCHWARTZANDBALLEN.COM

TELEPHONE
(202) 776-0700

FACSIMILE
(202) 776-0720

MEMORANDUM

June 29, 2010

To Our Clients and Friends

Re: FinCEN Proposal for Prepaid Access (Stored Value) Products

The Financial Crimes Enforcement Network (“FinCEN”) is proposing to amend its regulations applicable to various prepaid and stored value products to address risks of money laundering, terrorist financing or other illicit activity. Non-bank providers and sellers of the products (referred to by FinCEN as “prepaid access”) would be required to establish and maintain anti-money laundering programs, file suspicious activity reports (“SARs”) and comply with customer information and transaction recordkeeping requirements. Providers of prepaid access also would be required to register with FinCEN as money services businesses (“MSB”). Comments are due 30 days after publication in the *Federal Register*, which is expected shortly.

DEFINITIONS

Under the proposal, prepaid access is an electronic device or vehicle, such as a card, code number, mobile identification number, personal identification number or other instrument, that provides a portal to funds or the value of funds paid in advance and retrievable and transferable in the future.

A “prepaid program” is an arrangement under which one or more persons act together to provide a form of prepaid access. The proposed rules exclude the following programs from coverage:

- Providing access to funds not exceeding the following limits and where the maximum value is clearly visible on the product: (1) \$1000 maximum value initially loaded at the time of purchase; (2) \$1000 maximum aggregate value associated with the prepaid access at any given time; and (3) \$1000 withdrawn from the prepaid access device on a single day;

SCHWARTZ & BALLELLLP

- Providing “closed-loop prepaid access” (funds or value that can be used only with a defined merchant or locations such as a specific retailer or retail chain); or
- Providing for payment of benefits, incentives, wages or salaries, or flexible spending account reimbursements.

However, the above programs may not permit international transmissions of funds or value, person-to-person transfers or other transfers among users, or loading of value from other non-depository sources onto prepaid access (with the exception of closed loop prepaid access).

A “provider of prepaid access” is the person with principal oversight and control over a prepaid program. A “seller of prepaid access” is a person that receives funds in exchange for providing prepaid access to the person that provided the funds or to a third party as directed by that person.

REQUIREMENTS

The proposal requires every prepaid program to have a provider of prepaid access that is registered with FinCEN as a MSB. Providers would be required to maintain transaction records for a period of five years.

Both providers and sellers of prepaid access would be required to have anti-money laundering programs that include procedures for verifying the identity of customers, filing reports, creating and retaining records and responding to law enforcement requests. Providers and sellers would be also required to comply with the SAR filing requirements.

A copy of the proposed rulemaking can be found on our web site at <http://www.schwartzandballen.com/news.html>.

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.